United States Court of Appeals

for the Second Circuit

APPENDIX

77-6188

B

P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,

Plaintiff-Appellant,

-against-

UNITED STATES POSTAL SERVICE; E. THEODORE KLASSEN, in his capacity as Postmaster General of the United States; UNITED STATES CIVIL SERVICE COMMISSION; and ROBERT E. HAMPTON, in his capacity as Chairman of the United States Civil Service Commission,

Defendants-Appellees,

UNITED STATES OF AMERICA; and ELMER B. STAATS, in his capacity as Comptroller General of the United States,

Defendants.

UNITED STATES COURT OF APPEALS
FILED
JAN 9 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

ROBERT B. FISKE JR.
United States Attorney
For the Southern District
of New York, Attorney for the
Appellees and Defendants
One St. Andrews Plaza
New York, New York 10007
(212) 791-1968

MICHAEL D. HAMPDEN
Attorney for Appellant
The Legal Aid Society
1029 East 163rd Street
Bronx, New York 10459
(212) 991-4600

PAGINATION AS IN ORIGINAL COPY

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Jury demand date:

CLASS ACTION

D. C. Form No. 106 Rev.

76 CIV. 155

TITLE OF CASE

JESSE B. STEPHENS, ON BEHALF OF HIMSELF AND ALL OTHER PERSONS SIMILARLY SITUATED,

AGAINST,

UNITED STATES OF AMERICA,
UNITED STATES POSTAL SERVICE,
THEODORE KIASSNES IN HIS CAPACITY AS POSTMASTER GENERAL OF THE UNITED STATES:
UNITED STATES CIVIL SERVICE COMMISSION,
ROBERT E. HAMPTON, IN HIS CAPACITY AS CHAIRMAN OF THE UNITED STATES CIVIL SERVICE COMMISSION AND
ELMER B. STAATS, IN HIS CAPACITY AS COMPTROLLER GENERAL FO THE UNITED STATES.

ATTORNEYS

For plaintiff:

GERALD MANN
THE LEGAL AID SOCIETY
1029 East 163rd St.
Bronx, N.Y. 10459
991- 4600

For defendant:

U.S.Atty,

STATISTICAL RECORD

J.S. 5 mailed X

J.S. 6 mailed ✓

Basis of Action:

TO PROCURE [illegible] 28 U.S.C. [illegible]

DATE	NAME OR RECEIPT NO.	REC.
1/26/76	Leg Aid	15
1/27/76	[illegible]	5
2/3/76	[illegible]	

Clerk

Marshal

Docket fee

A-2

JUDGE GR

73 CIV. 1

DATE	PROCEEDINGS	Date Judgm.
April-73	Filed Complaint. Issued Summons.	
April-73	Filed Order appointing Clinton J. Thomas to serve a summons and complaint upon defts. Acting Clerk.	
Apr23-73	Filed summons and affdvt of service by Clinton J. Thomas on deft United States of America on 4-13-73.	
Aug.21-73	Filed Affdvt in opposition to motion for determination of class action.	
Aug.	Defts. memo of law in opposition to pltf. motion for determination of class action	AU
Aug.21-73	FiledANSWER to complaint by U.S.A.	
Dec. 11-73	Filed stip. & order that pltff. may file and serve an amended complaint-Griesa,J.	
Dec. 14-73	Filed amended complaint	
Jan. 21-74	Filed defts' ANSWER to amended complaint.	
Feb. 4-74	Filed memorandum that pltff's motion for a class action treatment and for the convening of a three-judge court is denied in all respects-So ordered-- Griesa,J.-mailed notice.	
July 3-74	Filed Stip & Order extending time for defts to answer or object to interrogs. to 7-16-74.....GRIESA,J.	
Jul.18-74	Filed defts answers to pltffs interrogs.	
SEPT 23-74	PRE-TRIAL CONFERENCE HELD BY GRIESA, J	
11-21-75	PRE-TRIAL CONFERENCE HELD BY GRIESA, J.	
01-06-76	BEFORE GRIESA, J. non-Jury trial begun.	
01-07-76	trial cont'd and concluded. Judge's decision for deft. U.S.A. (Judgment to be submitted by USA)	
01-22-76	Filed Judgment # 76,022-- that deft. shall have Judgment against the pltff. in the amount of $87.00 plus costs to be taxed. GRIESA, J. Judgment entered- 01-22-76 Clerk (m/n)	
03-15-76	Filed Judgment # 76,216-- ordered that the Judgment previously entered on 1-22-76 is vacated and that the deft.U.S. Postal Service shall have judgment against the pltff in the sum of $87.00 plus costs to be taxed. GRIESA, J. Judgment entered- 3-16-76 Clerk (	
04-01-76	Filed transcript of proceedings, dated 1-6, 1-7, 76	
05-12-76	Filed pltff's notice of appeal to USCA from the judgment entered on 3-15-76. Copy mailed to: U.S. Attorney, S.D. of N.Y. Fnt. 5-12-76	
05-25-76	Filed pltff's affdvt. ans notice of motion for an order for leave to appeal in forma pauperis.	
05-25-76	Filed memo endorsed (on last page) on motion filed 5-25-76 . Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor. GRIESA, J. (m/n	
06-21-76	Filed notice that the record on appeal has been certified and transmitted to the USCA this date.	
6-18-76	Filed supplemental record on appeal consisting of 1 vol.	
6-18-76	Filed [illegible]	
6-15-76	Filed [illegible]	
01-24-77	Filed True Copy of USCA 2nd Circuit Order that judgment of District C is affirmed in part and reversed in part,etc. as indicated.The cause remanded to the dist. court with directions to enter a new judgment in favor of App. [illegible] in the sum of $2,000 plus costs to be taxed by the clerk of c each party is to bear its own costs of this appeal. m-	
02-15-77	Filed Pltff's Affdvt and Notice of Motion for an order vacating [illegible]	

TITLE	DEFENDANT	DOCKET NO
EPHEMIS, JESSE B. ETC.	UNITED STATES OF AMERICA, ETAL	73 CIV 1559

GRIESA, J

DATE	NR.	PROCEEDINGS
05-02-77		Filed Defts' Counter Rule 9(g) Statement.
05-02-77		Filed Defts' Memorandum of Law in opposition to pltff's motion pur to Rule 60(b) FRCP for relief from judgment against pltff, and i response to pltff's motion for summary judgment in his favor.
06-27-77		Filed stip & order withdrawing pltff's motion dated 2-3-77 witho prejudice to renew.. So ordered- GRIESA, J.
08-01-77		Filed Judgment # 77,982-- that pltff. shall have judgment against the deft. United States Postal Service in the net amount of $3,074.00, plus pltff's costs to be taxed. GRIESA, J. Judgment entered 8-1-77 Clerk (n/n)
		Received this date - - 9-9-77 - - from file clerk
* 04-15-77		Filed PltffsStatement pursuant to Rule 9(g) and Notice of motion for an or relieving pltff from judgment etc. RET: 4-25-77.
09-09-77		Filed Memo Endorsed' on motion filed 4-15-77 .....Motion denied. So Ordered.GRIESA,J DATED: JUNE 24, 1977.
9-30-77		Filed Bill of Costs in the sum of $50.00 in favor of pltff as against US Postal Service only and added to judgment. Clerk.
11-07-77		Filed NOTICE OF APPEAL of Pltff to USCA 2nd Circuit from final order file on 9-9-77 against U.S. Postal Service and U.S. Civil Service Commissi copy mailed to Attorney for pltff:Michael D.Hampden,The Legal Aid Society 1029 East 163rd St. Bx. NY 10459 and copy to U.S. Attorney.

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JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated, Plaintiffs, - against - UNITED STATES OF AMERICA; UNITED STATES POSTAL SERVICE; E. THEODORE KLASSEN, in his capacity as Postmaster General of the United States; UNITED STATES CIVIL SERVICE COMMISSION; ROBERT E. HAMPTON, in his capacity as Chairman of the United States Civil Service Commission; and ELMER B. STAATS, in his capacity as Comptroller General of the United States, Defendants.	73 CIV. 1559 TPG JUDGMENT

This action came on for trial before the court, Hon. Thomas P. Griesa, District Judge, presiding, and the issues having been tried on January 6 and 7, 1976, and a decision having been rendered, and the court having found that the plaintiff is entitled to the sum of $7,533.00 on his claim against the defendant United States Postal Service, and that the defendant United States Postal Service is entitled to the sum of $7,620.00 on its counterclaim against the plaintiff, and that the net sum owing between such parties is $87.00, from the plaintiff to the defendant, and this court expressly determines that there is no just reason for delay in entering a final judgment, and that a final judgment, in favor of

TPG

the defendants should be entered, it is

ORDERED AND ADJUDGED, that the judgment previously entered on January 22, 1976, is hereby vacated, and it is further

TPG

ORDERED AND ADJUDGED, that the defendant United States Postal Service shall have judgment against the plaintiff in the sum of $87.00, plus its costs to be taxed by the clerk of the court.

Dated: New York, New York
~~February~~ March 15, 1976

/s/ Thomas P. Griesa
THOMAS P. GRIESA
United States District Judge

JUDGMENT ENTERED 3/16/76

/s/ Raymond F. Burghardt
Clerk

A-6

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 19th day of November, one thousand nine hundred and seventy-six.

Present: HONORABLE WILFRED FEINBERG

HONORABLE WALTER R. MANSFIELD

HONORABLE THOMAS J. MESKILL

Circuit Judges,

Filed
U.S. District Court
Jan. 24, 1977
S.D.N.Y.

JESSE B. STEPHENS,

Plaintiff-Appellant,

v. Docket No. 76-6087

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in part and reversed in part.

Plaintiff-Appellant Stephens is a former postal employee. He commenced this action to recover employment benefits. The government counterclaimed for the value of items of registered mail allegedly stolen by Stephens. The district court held that both parties had established their claims and entered a net judgment in favor of the government in the amount of eighty-seven dollars plus costs.

The only issue raised on appeal is whether the finding by the district court that Stephens was guilty of the theft of eleven items of mail from the postal service was clearly erroneous under the standards set in Boerner v. United States, 117 F.2d 387 (2d Cir. 1939), cert. denied, 313 U.S. 587 (1941). We hold that the finding was clearly erroneous with respect to the parcels numbered 1, 4, 6, 7, 8 and 9, and we reverse as to those parcels. The finding was not clearly erroneous with respect to the parcels numbered 2, 3, 5, 10 and 11, and we affirm as to those parcels.

The cause is remanded to the district court with directions to enter a net judgment in favor of Plaintiff-Appellant Stephens in the amount of $ 3,074 plus costs to be taxed by the clerk of the court. Each party is to bear its own costs of this appeal.

/s/ Wilfred Feinberg
WILFRED FEINBERG

/s/ Walter R Mansfield
WALTER R. MANSFIELD

/s/ Thomas J. Meskill
THOMAS J. MESKILL

A-8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,	
Plaintiff,	NOTICE OF MOTION
-against-	73 Civ. 1559(TPG)
UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE, et al.,	
Defendant.	

Please take notice that upon the annexed statement pursuant to Rule 9(g) of the General Rules of this court and the accompanying memorandum of law, the plaintiff will move this court before Hon. Thomas P. Griesa, at the United States Courthouse, Foley Square, New York, on April 25, 1977 at 10 A.M., in room 619, or as soon thereafter as counsel can be heard for an order pursuant to Federal Rules of Civil Procedure Rule 60(b) relieving the plaintiff from the judgment of this court entered on March 16, 1976 and Rule 56 granting plaintiff summary judgment directing the defendant United States Postal Service to pay over to the defendant United States Civil Service Commission the sum of $3,074 and directing the Civil Service Commission to establish a retirement annuity for plaintiff, retroactive to August 12, 1971, the date his employment with the

Postal Service was terminated, and for such other and further relief as to the court may seem just and proper.

Dated: Bronx, New York
March 11, 1977

/s/ IAN F. FELDMAN

MICHAEL D. HAMPDEN
Attorney for plaintiff
The Legal Aid Society
1029 East 163rd Street
Bronx, New York 10459
Tel. (212) 991-4600
Ian F. Feldman, of counsel

To: Robert B. Fiske Jr.
United States Attorney for
the Southern District of
New York
Attorney for Defendants
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,

Plaintiff,

-against-

UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE, et al.,

Defendants.

STATEMENT PURSUANT TO RULE 9(g)
73 Civ. 1559(TPG)

Pursuant to Rule 9(g) of the General Rules of this court, plaintiff contends that with respect to the following material facts there is no genuine issue to be tried:

1. The plaintiff was employed by the defendant United States Postal Service (Postal Service) and its predecessor United States Post Office Department from January 24, 1948 through August 12, 1971.

2. Plaintiff's employment came under the provisions of the civil service retirement system, and there was automatically deducted a percentage of his basic pay which was then deposited with the Treasurer of the United States to the credit of the Civil Service Retirement and Disability Fund.

3. The Civil Service Retirement and Disability Fund is administered by the defendant Civil Service Commission.

4. Neither the Postal Service nor the Post office Department is or was involved with the administration of the civil service retirement system.

5. During the course of his employment, the plaintiff earned certain pecuniary benefits in the nature of unused annual leave of $454.17, unpaid salary of $240.00, and also had on deposit with the Civil Service Retirement and Disability Fund a lump-sum retirement credit of $6,838.83.

6. When plaintiff's employment terminated, he had the option of receiving the lump-sum retirement credit or in lieu a retirement annuity.

7. The Postal Service refused to pay plaintiff any of his benefits on the ground it was charging him with the theft of certain insured (registered) mail during his employment and he was indebted to it for the losses it incurred when it paid claims based on their nondelivery.

8. By letter dated August 6, 1971, the Postal Service notified the Civil Service Commission to withhold all benefits from plaintiff for the reason that he was indebted to it. A

copy of the letter is annexed as Exhibit A.

9. On November 7, 1971, plaintiff, mistakenly believing that he would not be entitled to receive a retirement annuity, applied to the Civil Service Commission for a refund of his lump-sum retirement credit. A copy of plaintiff's Application for Refund of Retirement Deductions in annexed as Exhibit B.

10. By letter dated November 3, 1972 to the Civil Service Commission, plaintiff requested that his November 7, 1971 application for a lump-sum retirement credit be withdrawn and his right to an annuity reinstated. A copy of the letter is annexed as Exhibit C.

11. By letter dated November 22, 1972, the Civil Service Commission denied plaintiff's request for the annuity. A copy of the letter is annexed as Exhibit D.

12. The plaintiff commenced an action in this court for payment of his benefits. The Postal Service counterclaimed for the amount of its losses.

13. On January 6, 1976, the case was tried before this court (Hon. Thomas P. Griesa, J.) without a jury, and resulted in a decision that the plaintiff was entitled to the sum of $7,533 on his claim against the Postal Service and that the Postal

Service was entitled to the sum of $7,620 on its counterclaim against the plaintiff; therefore the net sum owing between the parties was $87 from the plaintiff to the Postal Service.

14. At the trial of this case, the issue was raised of whether the plaintiff was entitled to a lump-sum retirement credit or an annuity. In opposition to the plaintiff's claim that he was due an annuity, the attorney for the defendants stated in court that the refund had been paid when the Civil Service Commission paid the funds in its possession to the Postal Service in satisfaction of its [illegible]claimed indebtness. A copy of the relevant pages of the trial transcript (pp. 210-218) are annexed as Exhibit E.

15. This court held that the Postal Service was indebted to the plaintiff for the lump-sum retirement credit rather than the annuity.

16. On March 16, 1976, a judgment was entered in favor of the Postal Service against the plaintiff in the sum of $87. The judgment contained a provision certifying the judgment for appeal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure because there were multiple parties and claims and the only defendant the judgment has being entered against was the Postal Service. A copy of the judgment is annexed as Exhibit F.

17. The plaintiff appealed the judgment to the United States Court of Appeals for the Second Circuit, which rendered a decision on November 19, 1976 (Docket No. 76-6087) affirming in part and reversing in part the judgment and remanding the case to the district court with directions to enter a net judgment in favor of the plaintiff in the sum of $3,074.

18. On January 24, 1977, the clerk of this court entered a judgment pursuant to the directions of the Court of Appeals. A copy of the decision and judgment is annexed as Exhibit G.

19. Following the decision by the Court of Appeals, plaintiff requested that the judgment in his favor be converted into a retirement annuity. The Civil Service Commission denied plaintiff's request.

Dated: Bronx, New York
March 11, 1977

MICHAEL D. HAMPDEN
Attorney for plaintiff
The Legal Aid Society
1029 East 163rd Street
Bronx, New York 10459
Tel. (212) 991-4600

Ian F. Feldman, oof counsel

A-15

1A355825
408/22/4614 17

NOTIFICATION OF PERSONNEL ACTION

EMPLOYEE SEE GENERAL INFORMATION ON REVERSE

Approp Comm

1-NAME(CAPS) LAST-FIRST-MIDDLE	MR.-MISS-MRS.	2-	3-BIRTH DATE (Mo., Day, Yr.)	4-SOCIAL SECURITY NO.
STEPHENS JESSE B	MR		08/28/13	408/22/4614

5-VETERAN PREFERENCE	6-TENURE GROUP	7-SERVICE COMP. DATE (F)	
2 (1-NO 2-5-PT. 3-10-PT. DISAB. 4-10-PT. COMP. 5-10-PT. OTHER)		11/02/44	

9A-FEGLI	9B-FEGHBP	10-RETIREMENT	11-(For CSC use)
1 (1-Covered-Reg. only-Elect. Opt.) 2-Ineligible 3-Waived 4-Covered-Reg. & Opt.)	1 (1-Covered 2-Elig. Pending 3-Ineligible 4-Elected Not to Enroll 5-Canceled)	1 (1-CS 2-FICA 3-FS 4-None 5-Other)	

12-NATURE OF ACTION CODE		13-EFFECTIVE DATE (Mo., Day, Yr.)	14-CIVIL SERVICE OR OTHER LEGAL AUTHORITY
346	REMOVAL -	08/12/71	REG. PM GENERAL LETTER DTD 8/5/71 211:GAP:313/idh

15-FROM: POSITION TITLE	POSITION NO.	16-PAY PLAN	OCCUPATION CODE	17-LEVEL	STEP	18-SALARY
DIST WINDOW CLK	SP2-1	PF	234002	05	11	PAF $07898

19-NAME AND LOCATION OF EMPLOYING OFFICE	BLOCK	FINANCE NO.	CLASS	CAG	PAY LOC.	DESIGN	ACTIVITY
POST OFFICE FDR 711 NEW YORK, NY	1	35 5825	1	A		11	0

20-TO: POSITION TITLE	POSITION NO.	21-PAY PLAN	OCCUPATION CODE	22-LEVEL	STEP	23-SALARY

24-NAME AND LOCATION OF EMPLOYING OFFICE	BLOCK	FINANCE NO.	CLASS	CAG	PAY LOC.	DESIGN	ACTIVITY

25-DUTY STATION (City-State-ZIP Code)	26-GSA LOCATION CODE
NEW YORK, NY 10001	

27	LEAVE BALANCE	RURAL DATA							
		CLASS	ROUTE NO.	TRI-WK.	LENGTH OF ROUTE	L.P. AMT.	STOPS	H.D. HRS.	E.M. ALLOW.

30-REMARKS:

☐ A. SUBJECT TO COMPLETION OF 1 YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING _____

17 ☐ B. SEPARATION. SHOW REASON BELOW. AS REQUIRED. CHECK IF APPLICABLE: ☐ DURING PROBATION ☐ FROM APPOINTMENT OF 6 MONTHS OR LESS

FOR REMOVING MAIL FROM OFFICIALS CHANNELS WHILE OFFICIALLY EMPLOYED ON 3/22/69. P.M. NOTICE OF EMERGENCY SUSPENSION FOR AN INDEFINITE PERIOD BY THE REGIONAL DIRECTOR, EFF. 3/31/69. IT WAS THE DECISION OF THE ASST. POSTMASTER GENERAL TO REMOVE, EFF. 8/12/71. THERE ARE KNOWN GOVERNMENT LOSSES CHARGEABLE TO THIS EMPLOYEE, AND ALL MONIES DUE HIM ARE TO BE WITHHELD UNTIL FURTHER NOTICE.

MR JESSE B STEPHENS
300 E 159 ST APT #1D
BX NY 10451

31-DATE OF APPOINTMENT AFFIDAVIT (Accessions only)

32-OFFICE MAINTAINING PERSONNEL FOLDER (If different from employing office)

33-CODE EMPLOYING DEPARTMENT OR AGENCY
PO 02 POST OFFICE DEPARTMENT

34-SIGNATURE (Or other authentication) AND TITLE
P.R. Larsen
P.M.

35-DATE 03/06/71

EXHIBIT A

U.S. GOVERNMENT PRINTING OFFICE 1970 - 370-231

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Standard Form No. 2802
U.S. Civil Service Commission
July 1966
FPM Supplement 831-1

APPLICATION FOR REFUND OF RETIREMENT DEDUCTIONS

CIVIL SERVICE RETIREMENT SYSTEM

To avoid delay in payment: (1) Complete application in full; (2) Typewrite or print in ink.

2802-106

1. NAME (Last) (First) (Middle)	2. DATE OF BIRTH (Month, day, year)	3. SOCIAL SECURITY NUMBER
MR. STEPHENS, JESSE B. MR. MRS. MISS	08-28-13	408-22-4614

4. LIST ALL OTHER NAMES YOU HAVE USED	5. PERIOD OF LAST SERVICE		6. TITLE OF LAST POSITION
	BEGINNING DATE	ENDING DATE	
	01-21-48	08-12-71	DIST. CLERK

7. DEPARTMENT OR AGENCY OF LAST EMPLOYMENT INCLUDING BUREAU, BRANCH, OR DIVISION	8. LOCATION OF LAST EMPLOYMENT (City, State and ZIP Code)	9. PREVIOUS APPLICATIONS FILED (Indicate by "X")
POST OFFICE	NEW YORK, N.Y. 10001	☐ RETIREMENT ANNUITY ☐ DEPOSIT OR REDEPOSIT ☐ REFUND ☐ VOLUNTARY CONTRIBUTIONS

10. LIST BELOW ALL OF YOUR OTHER CIVILIAN SERVICE FOR THE UNITED STATES GOVERNMENT OR DISTRICT OF COLUMBIA:

DEPARTMENT OR AGENCY (Including bureau, branch, or division where employed)	LOCATION OF EMPLOYMENT (City, State and ZIP Code)	PERIODS OF SERVICE		INDICATE WHETHER RETIREMENT DEDUCTIONS WERE WITHHELD FROM YOUR SALARY. (Check one)	
		BEGINNING DATE	ENDING DATE	WITHHELD	NOT WITHHELD

11. (A) HAVE YOU ACCEPTED ANY FURTHER EMPLOYMENT WITH THE FEDERAL OR DISTRICT OF COLUMBIA GOVERNMENT (OR ARRANGED FOR SUCH EMPLOYMENT TO BECOME EFFECTIVE WITHIN 31 DAYS FROM THE ENDING DATE SHOWN IN ITEM 5)? ☐ YES ☒ NO

11. (B) IF YOU ANSWER "YES" TO ITEM 11(A), ARE CIVIL SERVICE RETIREMENT DEDUCTIONS BEING WITHHELD OR WILL THEY BE WITHHELD FROM YOUR SALARY DURING SUCH EMPLOYMENT? ☐ YES ☐ NO

IF YOU ANSWER "YES" TO ITEM 11(A), COMPLETE ITEMS 12(A), 12(B), AND 12(C):

12.(A) DATE OF NEW APPOINTMENT (Month) (Day) (Year)	12(B) DEPARTMENT OR AGENCY, INCLUDING BUREAU, BRANCH, OR DIVISION, IN WHICH YOU ARE (OR WILL BE) EMPLOYED	12.(C) LOCATION OF NEW EMPLOYMENT (City, State and ZIP Code)

NOTICE TO APPLICANT

1. If you have more than 5 years of service you may be entitled to annuity rights which will be forfeited by payment of this refund unless you are later reemployed subject to the Civil Service Retirement Act.
2. If you were separated on or after October , 1956, from a position subject to the Civil Service Retirement Act, refund of retirement deductions is prohibited unless your separation occurred and your application is received in the Civil Service Commission at least 31 days before the earliest commencing date of any annuity for which you are eligible.
3. Refund of retirement deductions is also prohibited if you are currently employed in a position subject to Civil Service retirement deductions or will be so employed within 31 days from the date of the separation on which your claim for refund is based.

WHERE TO FILE YOUR APPLICATION

1. If you have been separated 30 days or le , this application should be forwarded to the office in which you were las employed.
2. If you have been separated more than 30 d , forward this application to the Bureau of Retirement and Insurance, U.S Civil Service Commission, Washington, D.C., 20415.

WARNING.—Any intentional false statemen n this application or willful misrepresentation relative thereto is a violation the law punishable by a fine of not more than $10,000 or imprisonment of ot more than 5 years, or both. (18 U.S.C. 1001)

I hereby certify that all statements in this application are true to the best of my knowledge and belief. I have read and understand the statements in the above Notice to Applicant.

NOTE: SIGN YOUR OWN GIVEN NAME, MIDDLE INITIAL, AND LAST NAME.

Jesse B. Stephens
(SIGNATURE OF APPLICANT)

300 E. 139 ST. APT. 12D
(NUMBER AND STREET)

11/7/11 (DATE) BRONX, NEW YORK 10451

EXHIBIT B

SEP 16 1971

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THE LEGAL AID SOCIETY
CIVIL BRANCH
APPEALS BUREAU
BRONX OFFICE
1029 EAST 163RD STREET
BRONX, NEW YORK 10459

TELEPHONE:
991-4600

KALMAN FINKEL, ATTORNEY-IN-CHARGE

CIATE ATTORNEY-IN-CHARGE
ICHAEL D. HAMPDEN

ORISON S. MARDEN
Chairman of the
LEON SILVERMAN
Pr
HAROLD H. HEALY, JR.
Tre
SAMUEL W. MURPHY, JR.
Secretary
EDWARD Q. CARR, JR.
Attorney-in-Chief
MRS. MARY B. TARCHER
Assistant Attorney-in-Chief

November 3, 1972

United States Civil Service Commission
Bureau of Retirement, Insurance and
Occupational Health
Washington, D.C. 20415

Dear Sirs;

We represent Jesse B. Stephens (Soc. Sec. #408-22-4614). Mr. Stephens was employed by the Postal Service from January 24, 1948 to August 12, 1971 when he was removed from the position of window clerk, PS level 5, Step 11, $7,895 per annum at the 36th Street Post Office in Manhattan.

In October 1971, following his removal from the Postal Service, Mr. Stephens filed an application with the Bureau of Retirement Insurance and Occupational Health for a refund of his contribution to the Civil Service Retirement Fund. Mr. Stephens was unaware that since he had completed 5 years of service he could leave his contribution in the fund and on reaching 62 years of age would receive an annuity (Civil Service Retirement Act §8A, FPM Sup 831-1 subchapter S12). Had Mr. Stephens been informed of this right he would not have filed for a retirement refund.

(At the time of removal the Postal Service is required to instruct the employee to wait until three months before he attains age 62 to file his application for retirement (FPM Sup 831-1, subchapter S12). The Postal Service did not comply with this directive here.)

EXHIBIT Q

The purpose of the Society is to render legal aid in the City of New York to persons ... other counsel.—By-laws of The Legal Aid Society.

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The Postal Service has through its failure to inform our client of his rights effectively prevented him from exercising them. Accordingly we request that his application for a retirement refund (he has received no payment as of the date) be considered withdrawn and his right to an annuity reinstated.

If we do not hear from you within 10 days we will be forced totake the matter to the courts.

Very truly yours,

Elaine C Buck

Elaine C. Buck
Associate Appellate Counsel

EXHIBIT C

A-19

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH
WASHINGTON, D.C. 20415

YOUR REFERENCE

November 22, 1972

Elaine C. Buck
Associate Appellate Counsel
The Legal Aid Society
Civil Branch Appeals Bureau
1029 East 163rd St.
Bronx, N.Y. 10459

Dear Ms. Buck:

This is in reference to your letter of November 3, 1972 in the interest of Mr. Jesse B. Stephens regarding benefits payable from the Civil Service Retirement System.

Mr. Stephens once had an annuity right under the retirement law, but that right has been forfeited. At time of his separation from the Post Office on August 12, 1971, Mr. Stephen's past Federal service entitled him to a choice of two benefits: (1) a refund in full of retirement deductions plus interest, which would terminate all retirement rights; (2) a lifetime annuity commencing at age 62, if all retirement deductions were left in the fund.

The record shows Mr. Stephens applied for a refund of the deductions and interest credited to his account in the retirement fund. Enclosed is a photocopy of Mr. Stephen's application for refund. As you will note under "Notice to Applicant", the form states that "If you have more than 5 years of service, you may be entitled to annuity rights which will be forfeited by payment of this refund....".

The Post Office Department requested that we withhold $7,731.29 from the money payable to Mr. Stephens to recover a debt due the United States for theft of mail. When Mr. Stephens applied for a refund, this government claim had to be withheld from the refund payable. Since his retirement credit was only $6,606.02, this money was paid to the New York Postal Data Center to pay a portion of their claim.

By applying for a refund in lieu of the future annuity, Mr. Stephens ended his rights under the Civil Service Retirement System. There is no way we might pay any further benefit in the case.

Sincerely yours,

W. L. Schlappi
Chief of Section

Enclosure

THE COURT: The pension is the big item.

MR. FELDMAN: That's $6,838.83.

THE COURT: Yes. I think that is stipulated.

MR. WILSON: Yes.

THE COURT: And that includes accrued interest, right?

MR. FELDMAN: Yes, but there is some dispute in this case about whether the plaintiff is entitled to that lump sum payment returned or whether he is entitled to an annuity.

THE COURT: Look, both sides have rested and that means that the record is complete before me on all features of the case.

MR. FELDMAN: I don't think we did agree on the lump sum payment. Our proposed finding was that he was entitled to an annuity of $235 a month.

MR. WILSON: That is a question of law, your Honor.

MR. FELDMAN: He had the option at one time to elect --

THE COURT: Your position is that he would be entitled to an annuity.

MR. FELDMAN: Right, instead of the lump sum.

THE COURT: What is the government's position?

MR. WILSON: The government's position is that he

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

had at one point an option. He exercised that option on a form that told him that the exercise was irrevocable. He asked for a lump sum in lieu of an annuity.

THE COURT: Did he do that?

MR. FELDMAN: Yes, he did, but the annuity at that point had been denied him and it was done from prison.

MR. WILSON: I agree it was done from prison, your Honor.

THE COURT: Where is the stipulation on that procedure?

MR. WILSON: Your Honor, I was referring to the Exhibit 14 of the stipulation. It will take me a moment to find what paragraph in the stipulation itself deals with that.

Paragraph 25, page 5 of the stipulated facts.

THE COURT: What is it on this exhibit that makes it an irrevocable election?

MR. WILSON: I believe it is under the heading "Notice to Applicant." Let me just see if I can find it.

Point 1 says "If you have more than five years of service," which I believe it is conceded Mr. Stephens had, "you may be entitled to annuity rights which will be forfeit by payment of this refund unless you are later reemployed subject to the Civil Service Retirement Act."

MR. FELDMAN: While that may be true, your Honor, the election was made-- this document is signed by Mr. Stephens at a time when he had been notified by the Post Office that in fact he had no annuity. He was making a claim on something he really in effect did not have.

THE COURT: I don't see that there is an irrevocable election. It says "If you have more than five years of service you may be entitled to annuity rights which will be forfeit by payment of this refund unless you are later reemployed subject to the Civil Service Retirement Act." They haven't paid the refund.

MR. WILSON: Yes, they have, your Honor.

THE COURT: They have?

MR. WILSON: That has been paid from the Civil Service Commission Trust Fund to the postal service in satisfaction of Mr. Stephens' debt to the postal service.

MR. FELDMAN: That is the essence of the case.

MR. WILSON: Yes, it is.

THE COURT: In other words, your claim is that by applying for this refund he applied for -- in other words, that created an indebtedness from the Civil Service fund-- what do you call it, the Trust Fund?

MR. WILSON: Yes.

THE COURT: -- Trust Fund to Mr. Stephens, which in

effect the government has seized.

MR. WILSON: Garnisheed, yes, your Honor.

THE COURT: Okay. And that has already been done.

MR. WILSON: Yes, your Honor.

THE COURT: All right. And your position is that this did not constitute a waiver or any other thing that would deprive him of the annuity right and you are now claiming the annuity right.

MR. FELDMAN: That's correct, your Honor.

THE COURT: Let me get it though. If he was entitled to a lump sum as of this time, the figures you gave me are correct, namely, it is agreed that the figures would be the $6,838.83, right?

MR. FELDMAN: That's correct.

THE COURT: Both sides agree to that?

MR. WILSON: Plus the interest, yes, your Honor.

MR. FELDMAN: That includes some interest.

THE COURT: It includes interest to the date when it was due, right?

MR. FELDMAN: That includes $232 of interest.

THE COURT: $232.81 in interest, correct?

MR. FELDMAN: That's correct.

THE COURT: Agreed, Mr. Wilson?

MR. WILSON: Yes, your Honor.

THE COURT: All right. Then he had $240 in salary which he has not received, right?

MR. WILSON: Yes, your Honor.

THE COURT: There is an item of unused annual leave credit. What is that amount?

MR. FELDMAN: We are claiming that it is $544.05.

THE COURT: What does the government claim it is?

MR. WILSON: $454.17 in the stipulated facts, your Honor.

THE COURT: It is stipulated that it is at least.

MR. WILSON: Yes, your Honor.

THE COURT: What is the basis for -- that should be a matter of accounting. I can't understand the difference.

MR. WILSON: Your Honor, as far as we were able to determine, this was the number.

THE COURT: What is the basis for your 544?

MR. FELDMAN: Letters that the Post Office sent Mr. Stephens.

THE COURT: Admitting that amount?

MR. FELDMAN: Yes.

THE COURT: Where are the letters?

MR. FELDMAN: Not at my fingertips, your Honor.

THE COURT: Are they in evidence?

MR. FELDMAN: I don't think so, no.

THE COURT: All right. I am going to close it off at that.

MR. FELDMAN: We are also claiming a bonus of $300.

THE COURT: What is the basis for the bonus claim?

MR. FELDMAN: Similarly, letters from the government.

THE COURT: Are they in evidence?

MR. FELDMAN: No, they are not.

THE COURT: Okay. The items that I am going to consider as being items owed, which would be owed to plaintiff but for the counterclaim, are the $6,838.83 retirement and disability lump sum, $240 salary earned and unused annual leave credit of $454.17, which totals $7,533.

Now, the stipulation referred to a claim for lost mail of $8,425.46. However, I have kept a running total of the 11 items now claimed and I get the figure of $7,620. It doesn't make all that much difference if we take the $7,533. What is the total of the 11 items? Does the government have a different total?

MR. WILSON: Your Honor, the difference should be-- your Honor, I hadn't calculated the 11 you are referring to, but the difference between the two should be a claim which we presented no evidence on.

THE COURT: It should be about $800.

MR. WILSON: Which was paid in the amount of $800. That should be the difference between the figure--

THE COURT: You can add them up and correct me, but I think that I am right.

MR. WILSON: Your Honor, we accept your figure. It is quite close.

THE COURT: Yes. You want to present a brief oral argument? You have anything else you want to present, Mr. Feldman?

MR. FELDMAN: No, your Honor.

THE COURT: Does the government? You made an opening statement.

MR. WILSON: I did, your Honor. I had wanted to submit a post-trial brief.

THE COURT: I am going to tell you right now I am finding in favor of the government. I have analyzed the evidence as we went along. I made a chart as we went along. I will find in favor of the government. Let me put my findings very briefly on the record.

This is an action which has been tried by the court without a jury and the following are my findings of fact and conclusions of law:

Although the action originally had certain other

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claims, by the time of the trial which has just been held the claims of the parties boil down to the following:

Plaintiff, a former employee of the former Post Office Department and what became the postal service in April 13, 1971, is claiming in this action certain amounts allegedly due him from the government by way of compensation.

Because of a problem involving mail theft, the plaintiff was suspended from his employment in the Post Office Department in March, 1969, and was later finally terminated.

The evidence shows that the government would owe the plaintiff the following sums but for the counterclaim of the government, which I will mention shortly.

The government would owe plaintiff a lump sum amount on retirement and disability of $6,838.83. The government would owe the plaintiff salary of $240. The government would owe the plaintiff unused annual leave amounting to $454.17. The total of these amounts is $7,533.

Certain additional amounts of unused annual leave and an amount of bonus are claimed by plaintiff, but there is no evidence to support such additional claims.

In addition, plaintiff claims to be entitled to an annuity in lieu of the lump sum retirement of $6,838.83. For reasons discussed a few minutes ago with counsel, I reject

jhh

the claim that plaintiff is entitled to an annuity.

On November 7, 1971, the plaintiff filed an application for refund of retirement deductions and as a result of that application the Civil Service fund became indebted to the plaintiff for the lump sum. That lump sum has been seized by the postal service in satisfaction of certain amounts allegedly owed by the plaintiff to the postal service. In any event, I find that the indebtedness of the government to plaintiff is in the form of the lump sum payment rather than the annuity.

What plaintiff is seeking in this action is to have paid to him this unpaid indebtedness on the part of the government. At least, that is what is being sought as the issues are now tried, although, as I indicated, certain other issues were raised initially in the action, but have been dispensed with.

The government counterclaims, claiming that an amount greater than the $7,533 was and is owed by the plaintiff to the government under the following circumstances:

The government contends that it was required to honor a substantial amount of claims of persons who had suffered losses of registered mail items and that as a result of those claims the government is entitled to recover against the person responsible for those losses. The government contends

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,	73 CIV. 1559 TPG
Plaintiffs,	
- against -	JUDGMENT
UNITED STATES OF AMERICA; UNITED STATES POSTAL SERVICE; E. THEODORE KLASSEN, in his capacity as Postmaster General of the United States; UNITED STATES CIVIL SERVICE COMMISSION; ROBERT E. HAMPTON, in his capacity as Chairman of the United States Civil Service Commission; and ELMER B. STAATS, in his capacity as Comptroller General of the United States,	
Defendants.	

This action came on for trial before the court, Hon. Thomas F. Griesa, District Judge, presiding, and the issues having been tried on January 6 and 7, 1976, and a decision having been rendered, and the court having found that the plaintiff is entitled to the sum of $7,533.00 on his claim against the defendant United States Postal Service, and that the defendant United States Postal Service is entitled to the sum of $7,620.00 on its counterclaim against the plaintiff, and that the net sum owing between such parties is $87.00, from the plaintiff to the defendant, and this court expressly determines that there is no just reason for delay in entering a final judgment, and that a final judgment, in favor of

EXHIBIT E

the defendants should be entered, it is

ORDERED AND ADJUDGED, that the judgment previously entered on January 22, 1976, is hereby vacated, and it is further.

ORDERED AND ADJUDGED, that the defendant United States Postal Service shall have judgment against the plaintiff in the sum of $87.00, plus its costs to be taxed by the clerk of the court.

Dated: New York, New York
~~February~~ March 15, 1976

/s/ Thomas P. Griesa
THOMAS P. GRIESA
United States District Judge

JUDGMENT ENTERED 3/16/76

/s/ Raymond F. Burghardt
Clerk

EXHIBIT E

A-31

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 19th day of November, one thousand nine hundred and seventy-six.

Present:

HONORABLE WILFRED FEINBERG

HONORABLE WALTER R. MANSFIELD

HONORABLE THOMAS J. MESKILL

Circuit Judges,

Filed
U.S. District Court
Jan. 24, 1977
S.D.N.Y.

JESSE B. STEPHENS,

Plaintiff-Appellant,

v.

Docket No. 76-6087

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in part and reversed in part.

Plaintiff-Appellant Stephens is a former postal employee. He commenced this action to recover employment benefits. The govern-

ment counterclaimed for the value of items of registered mail allegedly stolen by Stephens. The district court held that both parties had established their claims and entered a net judgment in favor of the government in the amount of eighty-seven dollars plus costs.

The only issue raised on appeal is whether the finding by the district court that Stephens was guilty of the theft of eleven items of mail from the postal service was clearly erroneous under the standards set in Boerner v. United States, 117 F.2d 387 (2d Cir. 1939), cert. denied, 313 U.S. 587 (1941). We hold that the finding was clearly erroneous with respect to the parcels numbered 1, 4, 6, 7, 8 and 9, and we reverse as to those parcels. The finding was not clearly erroneous with respect to the parcels numbered 2, 3, 5, 10 and 11, and we affirm as to those parcels.

The cause is remanded to the district court with directions to enter a net judgment in favor of Plaintiff-Appellant Stephens in the amount of $3,074 plus costs to be taxed by the clerk of the court. Each party is to bear its own costs of this appeal.

Wilfred Feinberg
WILFRED FEINBERG, U.S.C.J.

Walter R. Mansfield
WALTER R. MANSFIELD, U.S.C.J.

Thomas J. Meskill
THOMAS J. MESKILL, U.S.C.J.

EXHIBIT G

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SJW:amm
73-1231

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,	:	
Plaintiff,	:	DEFENDANTS' COUNTER RULE 9(g) STATEMENT
-against-	:	
UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE, et al.,	:	73 Civ. 1559 (TPG)
Defendants.	:	

Pursuant to Rule 9(g) of the General Rules of this Court, defendants contend that there is no genuine issue to be tried:

1. With regard to the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 19 of plaintiff's Rule 9(g) Statement.

2. With regard to each of the items in the Stipulated Facts previously filed herein.

Defendants contend that there are issues of fact relating to:

1. The statement in paragraph 9 of plaintiff's Rule 9(g) Statement that plaintiff mistakenly believed that he would not be entitled to receive a retirement annuity.

SJW:amm
73-1231

2. The statement in paragraph 18 of plaintiff's Rule 9(g) Statement that on January 24, 1977 the clerk of this Court entered a judgment pursuant to the directions of the Court of Appeals.

Dated: New York, New York

April 27, 1977.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: *Samuel J. Wilson*
SAMUEL J. WILSON
Assistant United States Attorney
Office and Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1968

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JESSE B. STEPHENS, on behalf of himself and all other persons similarly situated,

Plaintiff, 73 Civ. 1559

-against-

UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE, et al.,

Defendants.

- x

Motion denied.

So ordered.

/s/ Thomas P. Griesa
U.S.D.J.

June 24, 1977

Filed
September 9, 1977
U.S. District Court
Southern District of New York

[RETYPED]